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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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FULBRIGHT & JAWORSKI, LLP				
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SUITE 5100				
HOUSTON, TX 77010-3095				
EXAMINER				
PATTERSON, MARC A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
01/26/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Office Action Summary****Application No.**

10/572,727

**Applicant(s)**

FURNEAUX, GEOFFREY

**Examiner**

MARC A. PATTERSON

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites the phrase ‘the different regions’ in line 19. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections – 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 7 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Tankersley (U.S. Patent No. 6,957,915 B2) as evidenced by Hanyu et al (U.S. Patent Application Publication 2002/0176974).

With regard to Claim 7, Tankersley discloses a sheet material (film; column 5, lines 37 - 40) and package (bag; column 4, line 33) that is compostable (biodegradable; column 5, line 30);

the film has a total of three layers (column 6, lines 8 - 11) and the inside layer has a lower seal initiation temperature than the outer and exterior layers (column 2, lines 66 - 67); the film therefore has a compostable substrate layer and a first compostable and sealable layer on a first side of the substrate layer and a second compostable and sealable layer overlying the first sealable layer, wherein the second sealable layer has a lower heat sealing initiation temperature than the first heat sealable layer. The inside layer also has a higher hot tack than the outer and exterior layers (column 5, lines 47 - 54). Tankersley does not disclose that a sealing strength is measured by hot tack, but Hanyu et al teach that sealing strength is measured by hot tack (paragraph 0052). Tankersley therefore discloses a first region, between the inside layer and the outer layer bonded to the inside layer, and a second region, between the outer and exterior layers, the first region having a higher seal strength than the second region. The claimed property of the sealing strength being controllable depending on whether sealing takes place through the second sealing layer only or through both sealing layers.

With regard to Claim 9, the package is a bag, therefore capsule, as discussed above, containing a beverage making ingredient (carrot; column 4, lines 42).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tankersley (U.S. Patent No. 6,957,915 B2).

Tankersley discloses a package comprising sheets as discussed above. Tankersley discloses a method comprising bonding two of the sheets in face - to - face relation (column 5, lines 3 - 12). Tankersley fails to disclose sealing the webs around a margin, under a first set of conditions in a first region of the margin and under a second set of conditions in a second region

of the margin, providing a peel strength that is different in the first and second regions, with a relatively high peel strength in the first region and relatively low peel strength in the second region. However, because Tankersley discloses heat sealing of a package, it would have been obvious for one of ordinary skill in the art, through routine optimization, to have selected sealing temperatures, therefore conditions, for different regions of the margin depending on the desired peel strength in regions of the end product.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tankersley (U.S. Patent No. 6,957,915 B2) in view of Jerdee et al (U.S. Patent No. 6,333,087 B1).

Tankersley discloses a package comprising a substrate layer as disclosed above. The layer comprises an ethylene copolymer (column 5, lines 24 - 25). Tankersley fails to disclose a layer that is a barrier layer.

Jerdee et al teach a package (column 1, line 21) comprising heat sealable ethylene vinyl alcohol for the purpose of providing a package having enhanced oxygen barrier properties (column 1, lines 36 - 42). One of ordinary skill in the art would therefore have recognized the advantage of providing for the heat sealable ethylene vinyl alcohol of Jerdee et al in Tankersley, which comprises a package comprising a heat seal layer, depending on the desired barrier properties of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a layer comprising ethylene vinyl alcohol, therefore a barrier layer, in Tankersley in order to obtain a package having enhanced oxygen

barrier properties as taught by Jerdee et al. Because Jerdee et al teaches a barrier layer, Jerdee et al teaches a filter sheet.

#### ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments regarding the rejections of the previous Action have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 7 of the remarks dated November 3, 2009, that the inside layer of Tankersely has a lower seal initiation temperature than the outer layer, rather than the intermediate layer.

However as stated above, an inside layer having a lower seal initiation temperature than the outer, therefore intermediate, and exterior layers is disclosed by Tankersely.

Applicant also argues on page 7 that Hanyu does not cure the deficiency of Tankersely.

However, Applicant does not address the teaching of Hanyu that sealing strength is measured by hot tack.

Applicant also argues, on page 9, that because the inside layer of Tankersely is sealed to itself, and heat must be applied to the outer layer, different sealing properties in different regions of the periphery is not disclosed by Tankersely.

However, because, as stated above, an inside layer having a lower seal initiation temperature than the outer, therefore intermediate, and exterior layers is disclosed by Tankersely, Tankersely discloses two regions of the periphery, the interface between the inside layer and outer layer, and the interface between the outside layer and exterior layer, having different sealing properties.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794